

Not online

Testimony of Jennifer Klein, Professor of History, Yale University

Office: Department of History

Yale University

320 York Street—P.O Box 208324

New Haven, CT 06520

Raised H.B. 5527 An Act Concerning a Domestic Workers' Bill of Rights

Good Afternoon Committee members. My name is Jennifer Klein. I am Professor of History at Yale University and a resident of New Haven. I am the author of two books, including *Caring For America: Home Health Workers in the Shadow of the Welfare State* (co-authored with Eileen Boris; Oxford University Press, 2012), and numerous articles on home-based labor, health care and long-term care policy, the history of health insurance and employee benefits, and labor policy. I have given numerous lectures around the country on the subject of home care workers and labor standards. I have previously been a fellow of the Robert Wood Johnson Foundation, the National Endowment for the Humanities, and Brookings Institution. I am here to testify in support of the Raised H.B. 5527, An Act Concerning a Domestic Workers' Bill of Rights.

I think this bill is well overdue. Domestic workers have struggled for 75 years to win the rights and recognition that are normally accorded to wage work in our society.

An occupation with a long history of exploitation and abuse, domestic work has had to carry a dual burden. The first is the link between the legacy of slavery and servitude and domestic work. With the history of slavery, segregation and racial hierarchy hanging over it, domestic work was defined as servile labor not worthy of a wage. It could be paid less because the women who found themselves having to do this work were disproportionately African-American or immigrant --poor women of color with few occupational alternatives. Its persistence as low wage labor has rested on racial bias that defined nonwhite workers as less capable.¹

¹ Phyllis Palmer, "Outside the Law: Agricultural and Domestic Workers Under the Fair Labor Standards Act," *Journal of Policy History* 7 (1995): 419-440.

The second of these burdens is the confusion of the home as a private space and the home as a workplace. This conflation has had several consequences. It has led to cultural assumptions that this is not “real” work, similar to work done in other waged labor settings; assumptions that it is unskilled labor, that these are duties that should be done freely by women who are daughters, mothers, or wives out of love, duty, obligation. Third, that if the home is a “private space,” it cannot be subject to the same regulatory monitoring or standards as other kinds of workplaces.

Our existing labor standards regime began during the New Deal of the 1930s. The labor rights of the New Deal—old age insurance, unemployment benefits, collective bargaining, minimum wages, maximum hours—excluded domestic workers. Congress enacted the Fair Labor Standards Act (FLSA) in 1938, a wage and hour law that had been at the forefront of women’s reform efforts for decades. President Roosevelt called for a law “insuring to all our able bodied men and women a fair day’s pay for a fair day’s work.” The Supreme Court ruled in 1937 that denying a living wage to workers “casts the burden for their support upon the community” and subsequently, a Congressional investigation determined low wages and long hours were “detrimental to the minimum standards of living necessary for health, efficiency, and general well-being.”² The FLSA established for the first time a national minimum wage, a forty-hour work week, and the requirement to pay time and a half overtime for hours beyond that. The FLSA, however, excluded the lowest paid workers: those who labored in retail, nonprofit and commercial services, hospitals, agriculture, and domestic service — the very occupations where women and African Americans were concentrated. African-Americans were largely excluded from the Fair Labor Standards Act, given that in the 1930s, over 65% of African-Americans worked in agriculture or domestic service. In 1940, FLSA categorized nurse-companions and other in-home care workers hired directly by clients as domestic servants.

² Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th Century America* (Oxford University Press, 2001), 101; Brief for the Urban Justice Center, Brennan Center For Justice, etc. Amici Curiae, *Long Island Care At Home, Ltd. V. Evelyn Coke*, No. 06-593, 2007.

As the New Deal made work the entre to a host of new social benefits, domestic work suffered further marginalization. The law therefore reinscribed the devaluation of this labor and its marginalization. In other words, it placed it legally and conceptually outside the bounds of labor.

We can identify three reasons for the exclusion of domestic work from the Fair Labor Standards Act:

- 1) The bill's drafters decided to shift from an argument that Congress could act to protect the general welfare to interstate commerce argument. So it initially applied to a narrow group of workers in manufacturing and transportation.
- 2) The architects of Social Security and labor law thought that it would be technically impossible to keep track of such workers and meet the administrative challenge of this type of labor market.
- 3) The Racial Oligarchy of the White South.

Because white political elites controlled the Southern political system so thoroughly within their states, they could easily maintain both personal and party dominance. Southern Democrats had tremendous seniority and therefore held key Committee chairs in Congress. Seeing themselves as "guardians of the region's racial order,"³ they insisted that New Deal legislation had to enable them to maintain control over black labor in the South. The political economy of a South that still relied on the semi-free, semi-indentured system of coerced and indebted labor of African-Americans (sharecropping) led to the exclusion of domestic workers from labor standards. The consequences of this political deal hung over this labor until the 1970s.

Domestic labor, of course, embodied many tensions. The home, as one historian has put it, had about it a romantic halo and aura of private sanctity--family space unpermeated by the market. "Its association with women's unpaid labor and its location

³ Ira Katznelson, *Fear Itself: The New Deal and the Origins of Our Time* (W.W. Norton & Co., 2013).

in the privacy of the home—not recognized as a site of work—often made it hard for others to see domestic work as real work.”⁴

Yet it’s important to note that even at the time—1930s, 1940s—there were reports published by the Department of Labor (Women’s Bureau and other divisions), law reviews, American Association of University Women, and National Council on Household Employment that clearly and explicitly recognized the relation between domestic and household member who hired and paid wage as an employer-employee relation.⁵

The other interesting thing is the New Dealers, labor reformers, and welfare advocates, including those who advocated for working women, thought that this kind of work would fade away with the commercialization and commodification of household tasks and services. As laundry, food preparation, child care, for example, moved into commercial industries or spaces, the need to do such labor at home would dramatically lessen. But the rise in women’s workforce participation since 1970 and the intensifying need in the last couple of decades for two incomes to support a family in fact led to a re-emergence of private household work. Families increasingly sought other women to take up the slack.

Over the course of the 1960s and 1970s, household workers were gradually folded into the coverage of New Deal social and labor legislation: the Social Security Act and Fair Labor Standards Act. The civil rights movement and the Women’s movement pushed Congress to do so. By the 1970s, the domestic worker was the both the lowest paid woman and the poorest paid African American. An active domestic workers rights

⁴ Phyllis Palmer, “Outside the Law: Agricultural and Domestic Workers Under the Fair Labor Standards Act,” *Journal of Policy History* 7 (1995): 419-440; Premilla Nadasen, “Citizenship, Domestic Work, and the Fair Labor Standards Act,” *Journal of Policy History*, vol. 24, no. 1 (2012); Jennifer Klein and Eileen Boris, *Caring For America: Home Health Workers in the Shadow of the Welfare State* (Oxford University Press, 2012).

⁵ Brief of Law Professors and Historians As Amici Curiae In Support of the Respondent, *Long Island Care at Home, Ltd. V. Evelyn Coke*, no. 06-593, 2007.

movement continually brought to light the fact that these were mature women, doing jobs in the paid labor market, and mostly as breadwinners for families. The women's movement began to make clear that housework was indeed work. Civil rights groups and the AFL-CIO argued that including domestic workers in the FLSA was the next step in civil rights—a matter of wage and economic justice.

Regarding the argument about administrative enforcement challenges, by the 1970s, employers were already required to pay into Social Security for domestics. During hearings in 1973, Southern Congressmen in particular mocked housewives ability to do the “hard calculating” of keeping track of minimum wage and social security—lacking a mind for business! But clearly they had seen through the morass, since already employers of domestic labor were self-reporting to the Social Security Administration and paying for more workers than the Census Bureau had counted as domestics. In 1974, Congress amended the Fair Labor Standards Act to include domestic workers. Yet Congress also pulled a sleight of hand, renaming home care aides as companions, equating them with casual teenage babysitters (which they were not), and indicating that as such, they could be excluded. When the Department of Labor went to implement the new amendments, it promulgated this new “companionship exemption.” Just as home care was about to take off as a major profit industry, employers were now guaranteed a cheap labor force.

Whether as live-in employees or live-out, they worked extended days in isolated settings. The intimate nature of the job, in which workers found themselves not only laboring in intimate spaces of the home but also enmeshed within the daily lives of families—a situation that has led to on-going opportunities for exploitation. By generating the fiction of the household help as “one of the family,” this claim was long used to extract additional work without pay. It was never clear when the work day actually ended; the worker could be randomly asked to stay extra hours. Because of the power imbalance in the home, there has been a persistent history of unfairly deducting from pay, with the assumption that goods in kind could substitute for wages. Employers offered “gifts” which were often cast-off family items, used goods, or left-over food;

workers, however, clearly saw these as wage avoidance tactics. It's precisely the ability to claim this is a "personal relationship" that made the job capricious.

New York

In 2010, New York passed its historic Domestic Workers Bill of Rights. It's important to note what made this possible was not only that the workers themselves organized to press for inclusion in the rights that all other workers have. They had partners in this campaign: that is, the employers. People who hire nannies, cleaners, and caretakers to work in their home organized as employers to lobby in conjunction with them—to take responsibility for what it means to have their home be a workplace. And if it is a workplace, why not have it be one that provides some dignity, well-being, and justice for everyone involved?

Now that the law is in place, the Employers for Justice Network, a group of present and former employers of part-time and full-time nannies, housekeepers, and direct care-givers, has made concrete improvements in their employment practices and taken action in support of domestic workers' rights. This network is also a resource for employers in an industry where there is often little guidance or discussion around ethical employment practices. Employers support each other in the process of improving their practices by answering questions, talking about their struggles as employers, and getting guidance on how to pay taxes, provide health insurance, and fulfill other employer obligations. Domestic Workers United is facilitating neighborhood-based dialogues between workers and employers to identify shared interests, build common understanding, and mutual respect.⁶ We should acknowledge that this is a positive good for everyone.

⁶ <http://www.domesticworkersunited.org/index.php/en/our-work/campaigns>

Conclusion:

The fact is we have long incorporated cooking, cleaning, and caring into market exchange. Once considered economically marginal, home care and various forms of domestic labor have become central to our economy. They are part of what I would call the care work economy. The care jobs are among the fastest growing occupations in the nation. There are two million home health care or personal care aides. Additionally under what the Department of Labor labels “personal care occupations”, there are another 3.5 million. Moreover, these jobs cannot be offshored.⁷

These are the jobs that define our current economy as well as our social lives. There’s no inherent reason they need to be valued less than manufacturing. Let’s remember, a century ago, a factory job was an awful job—low-paying, exploitative, dangerous, and precarious—until New Deal labor standards and unionization turned them into good, dependable jobs. And law helped to make it socially unacceptable to have exploitative conditions and for employers to be chiselers.

The fact is this is the civil rights issue of our time. It links to all of our most important national social issues: growing economic insecurity; immigration and immigrant rights; systemic racial inequality; an aging society and our absence of a genuine long-term care policy; the ability of medical care to prolong life; the expansion of the service economy. The jobs on the care spectrum can be turned into good quality jobs that enable people to work and live in dignity.

⁷ Boris and Klein, *Caring For America*, 6.